

CHAPTER 12
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

111—12.1(17A) Applicability. This chapter outlines a uniform process for the granting of waivers from rules implemented by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules implemented by the department.

12.1(1) Definitions.

“*Commission*” means the three-member statutory commission for the blind.

“*Department*” means the department for the blind.

“*Director*” means the director of the department for the blind.

“*Person*” means an individual, corporation, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*Waiver*” means action by the director that suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

12.1(2) Authority.

a. A waiver from rules adopted by the commission may be granted in accordance with this chapter if (1) the commission has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no federal or state statute or rule otherwise controls the granting of a waiver from the rule for which a waiver is requested.

b. No waiver may be granted for a requirement that is imposed by statute. Any waiver must be consistent with statute.

111—12.2(17A) Director discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director upon consideration of all relevant factors. The director may bring a request for a waiver to the commission for discussion prior to issuing a decision on the waiver. The director shall notify the commission of any waiver granted or denied.

12.2(1) The director may, in response to a completed petition or on the director’s own motion, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver in the specific case would not prejudice the substantial legal rights of any person; and

d. Waiver in the specific case would not have a negative impact on any person affected by the waiver.

In determining whether a waiver should be granted, the director shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all constituents.

12.2(2) Special waiver rules not precluded. These uniform waiver rules shall not preclude the director from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so and the director deems it appropriate to do so.

12.2(3) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds that grounds for the waiver continue to exist.

111—12.3(17A) Person's responsibilities in filing a waiver petition.

12.3(1) Application. All petitions for waiver must be submitted in writing to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

12.3(2) Content of petition. A petition for waiver shall include the following information where applicable and known to the person (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver will extend.
- c. The relevant facts that the petitioner believes would justify a waiver.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
- f. A detailed statement of the impact on any person affected by the granting of a waiver.
- g. Any information known to the person regarding the commission's or department's treatment of similar cases.
- h. The name, address, and telephone number of any federal or state public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
- i. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- j. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- k. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

111—12.4(17A) Burden of persuasion. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver from a rule.

111—12.5(17A) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

111—12.6(17A) Department responsibilities regarding petition for waiver.

12.6(1) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director or the director's designee.

12.6(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires.

12.6(3) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of

the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

12.6(4) Conditions. The director may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

12.6(5) Time for ruling. The director shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

12.6(6) When deemed denied. Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director.

12.6(7) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law by certified mail at the person’s last-known address.

111—12.7(17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the department shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.

111—12.8(17A) Voiding or cancellation. A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may at any time cancel a waiver upon appropriate notice if the director finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

111—12.9(17A) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

111—12.10(17A) Defense. After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

111—12.11(17A) Appeals; judicial review. Judicial review of the director’s decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

Exhibit A

Sample Petition (Request) for Waiver

BEFORE THE DEPARTMENT FOR THE BLIND

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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Requests for waiver from a department rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide petitioner’s (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite to the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested and include the exact scope and time period that the waiver will extend.

d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship/injustice to the petitioner; (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person.

e. Provide a history of prior contacts between the department and petitioner relating to the regulated activity, license, or grant that would be affected by the waiver. Include a description of each affected license or grant held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.

f. Provide a detailed statement of the impact on any person affected by the granting of a waiver.

g. Provide information known to the petitioner regarding the department’s treatment of similar cases.

h. Provide the name, address, and telephone number of any state or federal public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

i. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver.

j. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

k. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s Signature

Date

Petitioner should note the following when requesting or petitioning for a waiver:

1. The petitioner has the burden of proving to the director that (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; (c) waiver in the specific case would not prejudice the substantial legal rights of any person; and (d) waiver in the specific case would not have a negative impact on any person affected by the waiver.

2. The director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver.

3. All petitions for waiver must be submitted in writing to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

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